

CIVIL RIGHTS ACT, 42 U.S.C. §§ 1982

P.O. Box 689, Soledad, CA 93960

(PR)

(Enter the full name of the defendant(s) in this action)

C 07 5131 Case No. _____
(To be provided by the clerk of court)

Case No. 5131
(To be provided by the clerk of court)

**COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C §§ 1983**

[All questions on this complaint form must be answered in order for your action to proceed..]

D. If your answer is YES, list the appeal number and the date and result of the appeal at

each level of review. If you did not pursue a certain level of appeal, explain why.

1. Informal appeal First appeal submitted 9/10/2006, No. 06-03104:

Second appeal submitted 10/1/2006, No. 06-03545. Plaintiff

appeals were bypassed to the first level.

2. First formal level Plaintiff received appeal 06-03104 on 1/8/2007

and dissatisfied appealed to the next level. Received appeal

06-03545 on 11/7/2006 and dissatisfied appealed to next level.

3. Second formal level Plaintiff received appeal 06-03104 on 2/16/2007

and dissatisfied appealed to the next level. Received appeal

06-03545 on 5/22/2007 and prison staff gratuitously canceled 602.

4. Third formal level Plaintiff submitted response to director's level

on 3/8/2007, appeal No. 06-03104 and was rejected. Appeal

No. 06-03545 was cancelled and could not move to director's Level.

E. Is the last level to which you appealed the highest level of appeal available to you?

YES (X) NO ()

F. If you did not present your claim for review through the grievance procedure, explain why. Plaintiff made attempts to resolve the problem administratively,
unfortunately the third level exhaustion was denied because prison officials
failed to process properly the appeal leaving the administrative exhaustion
requirement unavailable. Further explained in the Complaint.

II. Parties

A. Write your name and your present address. Do the same for additional plaintiffs, if any.

Jeffrey T. Burts, CDCR# P-72028; Correction Training Facility;

P.O. Box 689, Soledad, CA 93960

B. Write the full name of each defendant, his or her official position, and his or her place of employment.

J. Tilton, Secretary of CDCR, Sacramento CA.; B. Curry, Warden CTF, Soledad;

W. Cohen. Chief Deputy Warden, Soledad; D. Benedetti, Lieutenant, Soledad;

COMPLAINT

- 2 -

1 A. Padilla, Lieutenant, Soledad; E. Abanico, Correctional Officer,
2 Soledad. Save J. Tilton, all other defendants work at Correctional
3 Training Facility in Soledad.

4 III. Statement of Claim

5 State here as briefly as possible the facts of your case. Be sure to describe how each
6 defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any
7 cases or statutes. If you have more than one claim, each claim should be set forth in a separate
8 numbered paragraph.

9 See attached Complaint

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22 IV. Relief

23 Your complaint cannot go forward unless you request specific relief. State briefly exactly what
24 you want the court to do for you. Make no legal arguments; cite no cases or statutes.

25 See attached Complaint

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I declare under penalty of perjury that the foregoing is true and correct.

Signed this 27 day of September, 2007

Jeffrey (Todd) Burts
(Plaintiff's signature)

Jeffrey Todd Burts, P-72028
 Correctional Training Facility
 P.O. Box 689
 Soledad, CA 93906

In Pro Per

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

Jeffrey T. Burts,)
)
 Plaintiff,)
)
 v.)
)
 J. Tilton, Secretary of CDCR;)
 B. Curry, Warden CTF;)
 W. Cohen, Chief Deputy Warden;)
 D. Benedetti, Lieutenant;)
 A. Padilla, Lieutenant;)
 E. Abanico, C/O; and Does 1)
 through 15,)
)
 Defendant(s).)

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. This is a claim for damages and injunctive relief brought under 42 U.S.C. § 1983 against prison officials for violations of plaintiff, Jeffrey T. Burts, rights to be free from cruel and unusual punishment as protected by the Eighth Amendment of the United States Constitution. Specifically at issue are plaintiff's right to be free from sexual abuse and deliberate indifference to his personal

1 safety. Plaintiff also complains herein about unlawful
2 retaliation constituting cruel and unusual punishment and
3 the inadequate training based on prison policy and customs
4 that violates plaintiff's Fourteenth and Eighth Amendment.
5 Plaintiff has exhausted the administrative remedies for
6 damages and injunctive relief.

7 8 JURISDICTION

9 2. This action is brought pursuant to 42 U.S.C. §
10 1983. Therefore jurisdiction is proper under 28 U.S.C. §§
11 1331 and 1343.

12 13 PARTIES

14 3. Plaintiff is a 40 year old African American male
15 currently incarcerated at Correctional Training Facility
16 Soledad State Prison (CTF). Plaintiff is a
17 patient/participant in the Mental Health Services Delivery
18 System at the CCCMS level of care and also has a reading
19 score of 5.1. At all times mentioned in this complaint,
20 he was a prisoner within California Department of Corrections
21 and Rehabilitation.

22 4. Plaintiff is informed and believes, and thereon
23 alleges, that at all times mentioned in this complaint
24 defendant Correctional Officer (C/O), E. Abanico, was
25 employed at CTF.

26 5. Plaintiff is informed and believes, and thereon
27 alleges, that at all time mentioned in this complaint
28 defendant Lieutenant (Lt.), A. Padilla, was responsible

1 for the supervision of subordinate personnel, as well as
2 for the safety and protection of all inmates at that
3 institution.

4 6. Plaintiff is informed and believes, and thereon
5 alleges, that at all time mentioned in this complaint
6 defendant Lieutenant (Lt.), D. Benedetti, was responsible
7 for the supervision of subordinate personnel, as well as
8 for the safety and protection of all inmates at that
9 institution.

10 7. Plaintiff is informed and believes, and thereon
11 alleges, that at all time mentioned in this complaint defendant
12 Chief Deputy Warden, W. Cohen, was responsible for the
13 supervision and discipline of all correctional staff at
14 CTF.

15 8. Plaintiff is informed and believes, and thereon
16 alleges, that at all time mentioned in this complaint
17 defendant Warden of CTF, B. Curry, was responsible for staff
18 training, supervision and discipline of all correctional
19 staff at CTF.

20 9. Plaintiff is informed and believes, and thereon
21 alleges, that at all time mentioned in this complaint
22 Secretary of CDCR, J. Tilton, is responsible for ensuring
23 the provisions of CDCR's training policy are adequate.

24 10. At all times mentioned in this complaint, each
25 individual defendant was acting under color of state law
26 and acting in their official capacity and in the scope and
27 course of their employment.

28 11. All of the defendants, each of them, are also

1 sued in their individual capacities for the claims alleged
2 in this complaint.

3 12. Plaintiff is informed and believes, and on the
4 basis of such information and belief alleges, that each
5 of Does 1 through 15 is responsible in some manner for the
6 injuries alleged in the complaint. The true names and
7 capacities of said Does are presently unknown to plaintiff,
8 therefore sues said Does by such fictitious names and will
9 seek leave to amend this complaint to add their true names
10 and capacities when the same have been ascertained.

11
12 FACTS

13 Prison Staff Sexual Misconduct:

14 13. On September 7, 2006, while plaintiff was walking
15 down the CTF-Central center corridor returning from the
16 legal library to his housing unit he was stopped by C/O
17 Abanico.

18 14. At that time Abanico conducted a random,
19 nonemergency, suspicionless clothed body search.

20 15. During the search Abanico touched plaintiff in
21 a sexual explicit and offensive manner that included running
22 his hand up plaintiff's inner thigh and cupping his penis
23 then squeezing his genitals. This conduct is prohibited
24 under Sexual Abuse in Detention Elimination Act (SADEA);
25 California Penal Code, and the CCR Title 15.

26 16. Plaintiff immediately protested the forced
27 submission to the inappropriate touching that drew the
28 attention of Lt. Padilla.

1 17. After the plaintiff explained to Padilla about
2 the inappropriate touching by Abanico, Padilla stated, "he
3 can touch you where ever he wants".

4 18. In addition to the above-described search Abanico
5 proceeded to rifle through plaintiff's legal documents and
6 wallet contents and unlawfully confiscated numerous
7 documents.

8 19. Abanico also confiscated plaintiff's state issued
9 I.D. card stating, "if you decide not to 602 me you will
10 get it back".

11
12 Prison Staff Retaliation:

13 20. Feeling fearful and unsafe because of the sexual
14 invasive conduct by Abanico and the acquiescent attitude
15 by Padilla and fearing this behavior is condoned and could
16 happen again, that on September 10, 2006, plaintiff submitted
17 staff complaints and inmate grievance (602) against Abanico
18 and Padilla.

19 21. The 602 requested the staff complaints be fully
20 investigated pursuant to (SADEA) regarding sexual abuse.
21 To have staff properly trained not to touch inmates genitals.
22 To insure plaintiff would not be retaliated against for
23 filing a complaint pursuant to (SADEA). The nature of the
24 complaint and desired remedies are consistent with Jordan
25 v. Garner, 986 F.2d 1521 (9th Cir.1993).

26 22. Approximately one week after plaintiff filed his
27 staff complaint and 602 he was summons to the program office
28 and told by Lt. Benedetti that, "you can either drop your

1 staff complaint or be placed in Administrative Segregation
2 (Ad-Seg)".

3 23. On September 15, 2006, due to the allegations
4 of staff misconduct Benedetti removed plaintiff from General
5 Population (GP) to AD-Seg under the pretext of security
6 and/or jeopardizing the integrity of the investigation.
7 Plaintiff remained in Ad-Seg for three months.

8 24. The retaliatory consequences of plaintiff's removal
9 from GP was fear and anxiety by being placed in a more
10 dangerous setting, loss of job assignment, and loss of
11 A-1-A privileges e.g., yard, canteen, phone, and visiting.
12 Furthermore, the removal substantially restricted plaintiff's
13 ability to confer with advocates in the ongoing indictments
14 of Abanico's and Padilla's misconduct.

15 25. On September 21, 2006, during review of segregation
16 order, at which time plaintiff was present, Chief Deputy
17 Warden Cohen determined that plaintiff's retention in
18 Ad-Seg was continuously appropriate.

19 26. During this committee Cohen announced that
20 plaintiff would receive a disciplinary 115 after the
21 investigation though he stated no grounds for issuance for
22 a 115. Subsequently, no 115 was ever issued to plaintiff.

23 27. On October 1, 2006, plaintiff submitted a staff
24 complaint / 602 from Ad-Seg against Benedetti and Cohen
25 asserting they retaliated against him for not dropping his
26 602 on Abanico for sexual abuse.

27 28. Plaintiff's protracted time in Ad-Seg before he
28 was released back to GP was burdened with numerous attempts

1 by Benedetti and Cohen to have plaintiff drop his complaint
2 against them.

3 29. On November 2, 2006, plaintiff was interviewed
4 by Lieutenant D. Silva regarding his inmate appeal first
5 level responses. On 11/2/06, plaintiff was brought to
6 Classification Committee for program review for a non adverse
7 transfer. They also strongly suggested he drop his 602
8 against Benedetti and Cohen at which time plaintiff would
9 not do.

10 30. Throughout this ordeal plaintiff has spoken with
11 other inmates who have similar accounts of being sexually
12 abused by Abanico and filed complaints and that senior staff
13 approached these inmates stating, "if they did not drop their
14 complaints they would be placed in Ad-Seg".

15 31. Plaintiff remains a CTF-Central as of the filing
16 of the complaint. He has been subjected to conduct which
17 he believes is sexual abuse and retaliatory in the light
18 of the absence of any incidents before he was sexual abused
19 on September 7, 2006, and complained about that misconduct.

20 32. Due to no fault of his own, plaintiff has not
21 been able to complete the administrative process to the
22 directors level, despite his attempts to do so.
23 The CTF's appeals coordinators are abusing the 602 process
24 by unreasonably returning plaintiff's appeal No. /
25 CTF-C-0603545 with the intent to deprive plaintiff's
26 progression to the final level of review. The impediments
27 are precluding exhaustion requirements. Furthermore,
28 coordinators arbitrarily and gratuitously terminated

1 plaintiff's valid 602 in favor of the defendants claiming
2 plaintiff refused to cooperate. This is patently incorrect.

3 33. Plaintiff was again deprived access to the final
4 level of review on appeal No. CTF-06-03104 staff complaint.
5 In this instance plaintiff received the second level response
6 a few days before the 15 day deadline to submit to the
7 directors level for complete exhaustion. Nevertheless,
8 plaintiff submitted a quick but belated appeals response
9 to the directors level for required exhaustion.

10 34. Plaintiff has thus exhausted the administrative
11 remedies for damages and the injunctive relief he seeks.

12
13 FIRST CAUSE OF ACTION FOR RELIEF
14 Violation of Plaintiff's Eighth Amendment Right
15 to be Free From Sexual Abuse
and Deliberate Indifference to Personal Safety

16 35. Plaintiff realleges and incorporates by reference
17 each allegation of paragraphs 1 through 34, inclusive, as
18 if alleged herein.

19 36. Defendant Abanico violated plaintiff's Eighth
20 Amendment right to be protected from cruel and unusual
21 punishment in the form of sexual abuse, by his unnecessary
22 and wanton infliction of pain, including physical abuse,
23 and psychological and emotional distress, as herein alleged.
24 Abanico's actions offend contemporary standards of decency.

25 37. Plaintiff is required to live in a environment
26 that is hostile to him by virtue of randomly being chosen
27 out of a group of inmates by Abanico, for body searches
28 that could result in a repeat of physical contact of a sexual

1 nature.

2 38. The above-referenced sexual abuse was sufficiently
3 pervasive to alter the conditions of plaintiff's daily
4 activities with periods of not going to the dinning hall
5 to eat or not going to the exercise yard in attempts to
6 avoid Abanico, and created a living condition that was
7 fearful, intimidating, restrictive, and distressful.

8 39. Plaintiff is informed and believes, that defendants
9 Padilla and Benedetti and other Doe defendants of who
10 plaintiff is not presently aware, knew that Abanico was
11 actively engaging in inappropriate touching during clothed
12 body searches. Plaintiff is further informed and believes,
13 that Padilla and Benedetti and Doe's knew that such conduct
14 would be harmful to plaintiff or any other inmate, yet
15 allowed Abanico to remain in his position of authority,
16 and carry out the offensive behavior. In doing so, Padilla
17 and Benedetti and Doe's implemented a policy that repudiated
18 plaintiff's rights and was unconscionable. Under the
19 doctrine of supervisory liability Padilla and Benedetti
20 and Doe's is liable for plainiff's injuries.

21 40. In doing so as alleged hereinabove, defendants
22 each of them acted with deliberate indifference to
23 plaintiff's personal safety, and subjected him to unnecessary
24 and wanton infliction of pain, including physical, emotional
25 and mental abuse under circumstances which did not require
26 the use of any inappropriate touching whatsoever.

27 41. Defendants' act's, as alleged herein, were
28 despicable, knowing, willful, malicious, and/or carried

1 out with reckless disregard for the plaintiff's federally
2 protected rights.

3 42. As a direct and proximate result of all of the
4 defendants' actions herein, plaintiff suffered, and continues
5 to suffer, physical injury, severe emotional and psychological
6 distress. Plaintiff is entitled to an award of compensatory
7 and punitive damages for his injuries and for injunctive
8 relief.

9
10 SECOND CAUSE OF ACTION FOR RELIEF
11 Violation of Plaintiff First and Eighth
12 Amendment Right to be Free from Retaliation

12 43. Plaintiff realleges and incorporates by reference
13 each allegation of paragraphs 1 through 34, inclusive, and
14 paragraphs 35 through 42, inclusive, of the First Cause
15 of Action, as if alleged herein.

16 44. Defendants Benedetti, Cohen, and Doe's have denied
17 plaintiff his First and Eighth Amendment right to be free
18 from retaliation when they entered into a conspiracy to
19 oppress, threaten, and intimidate plaintiff because of
20 plaintiff having exercised the rights and privileges secured
21 to him by the Constitution. Specifically, to grievance
22 unlawful sexual conduct without retaliation.

23 45. In furtherance of the above-described unlawful
24 conspiracy, defendants, acting under the color of the office,
25 and without any legitimate penological goal, removed
26 plaintiff from GP to a more dangerous placement in Ad-Seg.
27 The removal was not in good faith or well founded in that
28 it was contrary to provisions of SADEA and other statutes

1 against retaliatory actions. The removal was for the sole
2 purpose of circumventing the express provisions so that
3 defendants could more readily, by threats, intimidation,
4 and other unlawful means, attempt to coerce plaintiff to
5 withdraw his complaint. Defendants' actions offend
6 contemporary standards of decency.

7 46. Defendants, each of them subjected plaintiff to
8 physical, emotional and mental abuse under circumstances
9 which did not require the use of any relocation whatsoever.

10 47. Defendants' act's, as alleged herein, were
11 despicable, knowing, willful, malicious, and/or carried
12 out with reckless disregard for the plaintiff's federally
13 protected rights.

14 48. As a direct and proximate result of all of the
15 defendants' actions herein, plaintiff suffered, and continues
16 to suffer, physical injury, severe emotional and psychological
17 distress. Plaintiff is entitled to an award of compensatory
18 and punitive damages for his injuries and injunctive relief.

19

20

21 THIRD CAUSE OF ACTION FOR RELIEF
22 Violation of Plaintiff's Eighth and Fourteenth
23 Amendment Right to be Free From Cruel and
24 Unusual Punishment Because of Inadequate Training

25 49. Plaintiff realleges and incorporates by reference
26 each allegation of paragraphs 1 through 34, inclusive, and
27 paragraphs 35 through 42, inclusive, of the First Cause
28 of Action, and paragraphs 43 through 48, inclusive, as if
alleged herein.

28

1 50. Plaintiff is informed and believes, and claims
2 Tilton and Curry as agents for CDCR are liable for
3 "inadequate training" predicated upon the requisite degree
4 of fault that has been proven by the background and events
5 and circumstances which establish that defendant Abanico
6 physically touches genitals during clothed body searches
7 and that the "policy of inaction" to correct the unlawful
8 clothed body search training is the functional equivalent
9 of a decision by CDCR to violate plaintiff's rights.

10 51. Plaintiff's litigation posture with respect to
11 the question of inadequate training in this case is
12 consistent with establishing agency liability under § 1983.

13 52. Plaintiff has been informed by staff that
14 Correctional Officers are trained in the academy to rub
15 the crotch area of inmates. That such rubbing is required
16 for security, even though it is illegal under (SADEA).

17 53. Defendants', each of them subjected plaintiff
18 to physical, emotional and mental abuse under circumstances
19 which did not require the use of any unlawful body searches
20 whatsoever.

21 54. As a direct and proximate result of all of the
22 defendants' actions herein, plaintiff suffered, and continues
23 to suffer, physical injury, severe emotional and psychological
24 distress. Plaintiff is entitled to an award of compensatory
25 and punitive damages for his injuries and injunctive relief.

26 //

27 //

28 //

RELIEF REQUESTED

WHEREFORE, plaintiff requests that the court grant the following relief:

A. Issue an injunction ordering defendants Tilton and Curry or their agents to:

1. Immediately rescind old clothed body search training and implement revised clothed body search training that does not involve touching of genitals.

2. Immediately stop defendant Abanico from conducting clothed body searches that include touching prisoner's genitals.

B. Award compensatory damages in the following amounts:

1. \$50,000 against Abanico for physical and emotional injuries resulting from sexual misconduct.

2. \$25,000 against defendant Padilla for emotional injuries resulting from the omission to stop the sexual abuse and condoning the behavior.

2. \$50,000 jointly and severally against Benedetti and Cohen for the punishment and emotional injury resulting from the retaliation because of filing complaints.

C. Award punitive damages in the following amounts:


1. \$20,000 against Abanico;

2. \$10,000 against Padilla, Benedetti, and Cohen.

F. Grant such other relief as it may appear that plaintiff is entitled.

Date:

9/27/07


Jeffrey T. Burts,
Plaintiff in pro per.

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Jeffrey T. Burts, declare:

I am over 18 years of age and a party to this action. I am a resident of CTF-Cental, Soledad
Prison,
in the county of Monterey
State of California. My prison address is: CTF, P.O. Box 689, Soledad CA 93960

On _____,
(DATE)

I served the attached: Complaint and In Forma Pauperis

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Office of the Clerk
United States District Court for the Northern District
U.S. Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102-3483

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 27, 2007 Jeffrey (Todd) Burts
(DATE) (DECLARANT'S SIGNATURE)